

REFERENCE TITLE: liquor licenses; nonuse; discretionary cancellation

State of Arizona
Senate
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SB 1363

Introduced by
Senators Otondo: Bowie, Cajero Bedford, Contreras, Dalessandro, Farley,
Hobbs, Miranda, Peshlakai, Quezada

AN ACT

AMENDING SECTION 4-203, ARIZONA REVISED STATUTES; RELATING TO LIQUOR
LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-203, Arizona Revised Statutes, is amended to
3 read:

4 4-203. Licenses; issuance; transfer; discretionary
5 cancellation

6 A. A spirituous liquor license shall be issued only after
7 satisfactory showing of the capability, qualifications and reliability of
8 the applicant and, with the exception of wholesaler, producer, government
9 or club licensees, that the public convenience requires and that the best
10 interest of the community will be substantially served by the
11 issuance. If an application is filed for the issuance of a transferable
12 or nontransferable license, other than for a craft distiller license, a
13 microbrewery license or a farm winery license, for a location that on the
14 date the application is filed has a valid license of the same series, or
15 in the case of a restaurant license application filed for a location with
16 a valid hotel-motel license, issued at that location, there shall be a
17 rebuttable presumption that the public convenience and best interest of
18 the community at that location was established at the time the location
19 was previously licensed. The presumption may be rebutted by competent
20 contrary evidence. The presumption shall not apply once the licensed
21 location has not been in use for more than one hundred eighty days and the
22 presumption shall not extend to the personal qualifications of the
23 applicant.

24 B. The license shall be to manufacture, sell or deal in spirituous
25 liquors only at the place and in the manner provided in the license. A
26 separate license shall be issued for each specific business, and each
27 shall specify:

28 1. The particular spirituous liquors that the licensee is
29 authorized to manufacture, sell or deal in.

30 2. The place of business for which issued.

31 3. The purpose for which the liquors may be manufactured or sold.

32 C. A spirituous liquor license issued to a bar, a liquor store or a
33 beer and wine bar shall be transferable as to any permitted location
34 within the same county, provided such transfer meets the requirements of
35 an original application. A spirituous liquor license may be transferred
36 to a person qualified to be a licensee, provided such transfer is pursuant
37 to either judicial decree, nonjudicial foreclosure of a legal or equitable
38 lien, including security interests held by financial institutions pursuant
39 to section 4-205.05, a sale of the license, a bona fide sale of the entire
40 business and stock in trade, or such other bona fide transactions as may
41 be provided for by rule. Any change in ownership of the business of a
42 licensee, directly or indirectly, as defined by rule is deemed a transfer.

43 D. All applications for a new license pursuant to section 4-201 or
44 for a transfer to a new location pursuant to subsection C of this section
45 shall be filed with and determined by the director, except when the

1 governing body of the city or town or the board of supervisors receiving
2 an application pursuant to section 4-201 orders disapproval of the
3 application or when the director, the state liquor board or any aggrieved
4 party requests a hearing. The application shall then be presented to the
5 state liquor board, and the new license or transfer shall not become
6 effective unless approved by the state liquor board.

7 E. A person who assigns, surrenders, transfers or sells control of
8 a liquor license or business that has a spirituous liquor license shall
9 notify the director within thirty business days after the assignment,
10 surrender, transfer or sale. No spirituous liquor license shall be leased
11 or subleased. A concession agreement entered into under section 4-205.03
12 is not considered a lease or sublease in violation of this section.

13 F. If a person other than those persons originally licensed
14 acquires control over a license or licensee, the person shall file notice
15 of the acquisition with the director within thirty business days after the
16 acquisition of control and a list of officers, directors or other
17 controlling persons on a form prescribed by the director. All officers,
18 directors or other controlling persons shall meet the qualifications for
19 licensure as prescribed by this title. On request, the director shall
20 conduct a preinvestigation before the assignment, sale or transfer of
21 control of a license or licensee, the reasonable costs of which, not to
22 exceed one thousand dollars, shall be borne by the applicant. The
23 preinvestigation shall determine whether the qualifications for licensure
24 as prescribed by this title are met. On receipt of notice of an
25 acquisition of control or request of a preinvestigation, the director
26 shall forward the notice within fifteen days to the local governing body
27 of the city or town, if the licensed premises is in an incorporated area,
28 or the county, if the licensed premises is in an unincorporated area. The
29 local governing body of the city, town or county may protest the
30 acquisition of control within sixty days based on the capability,
31 reliability and qualification of the person acquiring control. If the
32 director does not receive any protests, the director may protest the
33 acquisition of control or approve the acquisition of control based on the
34 capability, reliability and qualification of the person acquiring control.
35 Any protest shall be set for a hearing before the board. Any transfer
36 shall be approved or disapproved within one hundred five days after the
37 filing of the notice of acquisition of control. The person who has
38 acquired control of a license or licensee has the burden of an original
39 application at the hearing, and the board shall make its determination
40 pursuant to section 4-202 and this section with respect to capability,
41 reliability and qualification.

42 G. A licensee who holds a license in nonuse status for more than
43 five months shall be required to pay a one hundred dollar surcharge for
44 each month thereafter. The surcharge shall be paid at the time the
45 license is returned to active status. ~~A license automatically reverts to~~

1 ~~the state after being held in continuous nonuse in excess of thirty-six~~
2 ~~months.~~ THE DIRECTOR MAY CANCEL A LICENSE AFTER THIRTY-SIX MONTHS OF
3 CONTINUOUS NONUSE IF THE DIRECTOR PROVIDES NOTICE TO THE LICENSEE BEFORE
4 THE LICENSE IS CANCELED. The director may waive the surcharge and may
5 extend the time period provided in this subsection for good cause. A
6 license shall not be deemed to have gone into active status if the license
7 is transferred to a location that at the time of or immediately before the
8 transfer had an active license of the same type, unless the licenses are
9 under common ownership or control.

10 H. A restructuring of a licensee's business is an acquisition of
11 control pursuant to subsection F of this section and is a transfer of a
12 spirituous liquor license and not the issuance of a new spirituous liquor
13 license if both of the following apply:

14 1. All of the controlling persons of the licensee and the new
15 business entity are identical.

16 2. There is no change in control or beneficial ownership.

17 I. If subsection H of this section applies, the licensee's history
18 of violations of this title is the history of the new business
19 entity. The director may prescribe a form and shall require the applicant
20 to provide the necessary information to ensure compliance with this
21 subsection and subsections F and G of this section.

22 J. Notwithstanding subsection B of this section, the holder of a
23 retail license having off-sale privileges may deliver spirituous liquor
24 off of the licensed premises in connection with the sale of spirituous
25 liquor. The licensee may maintain a delivery service and shall be liable
26 for any violation committed in connection with any sale or delivery of
27 spirituous liquor, provided that such delivery is made by an employee who
28 is at least twenty-one years of age. The retail licensee shall collect
29 payment for the price of the spirituous liquor no later than at the time
30 of delivery. The director shall adopt rules that set operational limits
31 for the delivery of spirituous liquors by the holder of a retail license
32 having off-sale privileges. For the purposes of this subsection, an
33 independent contractor or the employee of an independent contractor is
34 deemed to be an employee of the licensee when making a sale or delivery of
35 spirituous liquor for the licensee.

36 K. Except as provided in subsection J of this section, Arizona
37 licensees may transport spirituous liquors for themselves in vehicles
38 owned, leased or rented by such licensee.

39 L. Notwithstanding subsection B of this section, an off-sale retail
40 licensee may provide consumer tasting of wines off of the licensed
41 premises.

42 M. The director may adopt reasonable rules to protect the public
43 interest and prevent abuse by licensees of the activities permitted such
44 licensees by subsections J and L of this section.

1 N. Failure to pay any surcharge prescribed by subsection G of this
2 section or failure to report the period of nonuse of a license shall be
3 grounds for revocation of the license or grounds for any other sanction
4 provided by this title. The director may consider extenuating
5 circumstances if control of the license is acquired by another party in
6 determining whether or not to impose any sanctions under this subsection.

7 O. If a licensed location has not been in use for two years, the
8 location must requalify for a license pursuant to subsection A of this
9 section and shall meet the same qualifications required for issuance of a
10 new license except when the director deems that the nonuse of the location
11 was due to circumstances beyond the licensee's control.

12 P. If the licensee's interest is forfeited pursuant to section
13 4-210, subsection L, the location shall requalify for a license pursuant
14 to subsection A of this section and shall meet the same qualifications
15 required for issuance of a new license except when a bona fide lienholder
16 demonstrates mitigation pursuant to section 4-210, subsection K.

17 Q. The director may implement a procedure for the issuance of a
18 license with a licensing period of two years.